

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
American Time & Signal Company)	File No.: EB-SED-13-00009030
Licensee of Station WQFW336)	Acct. No.: 201632100004
)	FRN: 0015495773
)	
)	

ORDER

Adopted: April 12, 2016**Released: April 12, 2016**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communication's Commission has entered into a Consent Decree to resolve its investigation into whether American Time & Signal Company (ATS) operated wireless synchronized clock systems under station WQFW336 out of compliance with the terms of its license. To settle this matter, ATS admits that it allowed certain of its synchronized clock systems customers to operate transmitters under its temporary-fixed license in the same location for more than one year in violation of the Commission's rules, will implement a compliance plan to ensure this does not occur again, and will pay a \$12,000 civil penalty.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation into ATS's compliance with Section 90.137(b) of the Commission's rules.¹

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of ATS's basic qualifications to hold or obtain any Commission license or authorization.²

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act³ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁴ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 C.F.R. § 90.137(b).

² 47 C.F.R. § 1.93(b).

³ 47 U.S.C. §§ 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Mr. George Wilkes, President, American Time & Signal Company, 140 3rd St. So., Dassel, MN 55325-0707, and to its counsel, Mr. Kenneth E. Hardman, 5151 Wisconsin Ave., NW, Ste 312, Washington, DC 20016-4139.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and American Time & Signal Company, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether American Time & Signal Company violated Section 90.137(b) of the Commission's rules¹ regarding the operation of wireless synchronized clock systems under station WQFW336.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended.²
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (d) "ATS" means American Time & Signal Company, and its affiliates, subsidiaries, predecessors in interest, and successors-in-interest.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which ATS is subject by virtue of its business activities, including but not limited to, the Licensing Rules.
 - (g) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 11.
 - (h) "Covered Employees" means all employees and agents of ATS who perform duties, or supervise, oversee, or manage the performance of duties, relating to ATS's responsibilities under the Licensing Rules.

¹ 47 C.F.R. § 90.137(b).

² 47 U.S.C. § 151 *et seq.*

- (i) “Effective Date” means the date on which both the Bureau and ATS have signed the consent decree.
- (j) “Investigation” means the investigation commenced by the Bureau’s September 1, 2009, letter of inquiry³ regarding whether ATS violate the Licensing Rules.
- (k) “License” means the Commission-issued licenses for station WQFW336.
- (l) “Licensing Rules” means Section 90.137(b) of the Rules,⁴ and other provisions of the Act, the Rules, and Commission orders related to the use or operation of Conventional Industrial/Business Pool Radio Service stations.
- (m) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by ATS to implement the Compliance Plan.
- (n) “Parties” means ATS and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. At all relevant times, the frequencies licensed to ATS under WQFW336 were authorized for temporary fixed operations.⁵ Pursuant to Section 90.137(b) of the Rules, when any unit or units of a base station or fixed station that are authorized for operation at temporary locations actually remain or are intended to remain at the same location for more than one year, an application for a separate authorization specifying the fixed location shall be submitted to the Commission as soon as possible, but not later than 30 days after the expiration of the one-year period.⁶

3. On September 1, 2009, the Bureau issued a letter of inquiry to ATS directing it to submit a sworn written response to a series of questions relating to its operation of wireless synchronized clock systems under the License.⁷ ATS responded to the September 2009 LOI on September 29, 2009.⁸ This response indicated that ATS was allowing certain of its synchronized clock system customers to operate temporary fixed transmitters pursuant to the License at the same location for more than one year.

³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Dirk Lutz, American Time & Signal Co. (Sep. 1, 2009) (on file in EB-SED-13-00009030) (September 2009 LOI).

⁴ 47 C.F.R. § 90.137(b).

⁵ See “Radio Station Authorizations,” in FCC Universal Licensing System, Industrial/Business Pool, Conventional License - WQFW336 - AMERICAN TIME & SIGNAL CO, Administration, *available at* <http://wireless2.fcc.gov/UlsApp/UlsSearch/licenseAdminSum.jsp?licKey=2852751>.

⁶ 47 C.F.R. § 90.137(b).

⁷ See September 2009 LOI.

⁸ See Letter from Kenneth E. Hardman, Attorney for ATS, to Deborah Broderson, Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 29, 2009) (on file in EB-SED-13-00009030).

4. On December 28, 2011, ATS petitioned the Commission for waiver of the definition of mobile units under Section 90.7 of the Commission's Rules⁹ to allow licensing of its temporary fixed transmitters as mobile units.¹⁰ On November 29, 2012, the Commission issued a Waiver Order granting that petition with the requirements that (1) each customer location have a geographical center point and an operating radius not to exceed 20 kilometers, and (2) ATS retained the responsibility for maintaining the accuracy of its licensed sites via modifications to the License.¹¹ ATS subsequently began to license the fixed transmitters operating under the License as mobile units and by November 2015 all such transmitters were so registered.¹² ATS acknowledges that multiple transmitter sites operated under the License for more than one year at a fixed location prior to being licensed as mobile units pursuant to the Waiver Order.¹³ Following resolution of ATS's compliance issue, the company and the Bureau entered into settlement negotiations.

III. TERMS OF AGREEMENT

5. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

6. **Jurisdiction.** ATS agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, ATS agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against ATS concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of ATS's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.¹⁴

9. **Admission of Liability.** ATS admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 herein, that its actions that were the subject of the Investigation violated the Licensing Rules.

⁹ 47 C.F.R. § 90.7.

¹⁰ See American Time and Signal Co., *Order*, 27 FCC Rcd 14901 ¶ 1 (WTB-Mobility Div. 2012) ("Waiver Order").

¹¹ Waiver Order at 14901, 14903 ¶¶ 1, 11.

¹² See American Time & Signal, Response to Third Supplemental Inquiry at 2 (dated Jan. 28, 2016) (on file in EB-SED-13-00009030).

¹³ See American Time & Signal, Response to Supplemental Inquiries at 3 (dated Dec. 18, 2015) (on file in EB-SED-13-00009030).

¹⁴ See 47 C.F.R. § 1.93(b).

10. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, ATS shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that ATS complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Licensing Rules prior to assuming his/her duties.

11. **Compliance Plan.** For purposes of settling the matters set forth herein, ATS agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Licensing Rules, ATS shall implement the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, ATS shall establish Operating Procedures that all Covered Employees must follow to help ensure ATS's compliance with the Licensing Rules. ATS's Operating Procedures shall include internal procedures and policies specifically designed to ensure that ATS's operations under its FCC authorizations, including the License, are consistent with the Licensing Rules. ATS shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Licensing Rules.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Licensing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure ATS's compliance with the Licensing Rules. ATS shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. ATS shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** ATS shall establish and implement a Compliance Training Program on compliance with the Licensing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of ATS's obligation to report any noncompliance with the Licensing Rules under paragraph 12 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. ATS shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

12. **Reporting Noncompliance.** ATS shall report any noncompliance with the Licensing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after the discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that ATS has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that ATS has taken or will take

to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-C366, Washington, DC 20554, with a copy submitted electronically to Eric Ehrenreich at Eric.Ehrenreich@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

13. **Compliance Reports.** ATS shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of ATS's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Licensing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of ATS, stating that the Compliance Officer has personal knowledge that ATS (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 12 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁵
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of ATS, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that ATS has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that ATS has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-C366, Washington, DC 20554, with a copy submitted electronically to Eric Ehrenreich at Eric.Ehrenreich@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

14. **Termination Date.** Unless stated otherwise, the requirements of paragraphs 10 through 13 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

15. **Civil Penalty.** ATS will pay a civil penalty to the United States Treasury in the amount of \$12,000 within 30 calendar days of the Effective Date. ATS shall send electronic notification of payment to Eric Ehrenreich at Eric.Ehrenreich@fcc.gov, JoAnn Lucanik at JoAnn.Lucanik@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced in the caption of the Adopting Order. Regardless of the form of payment, a

¹⁵ *Id.* § 1.16.

completed FCC Form 159 (Remittance Advice) must be submitted.¹⁶ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

16. **Waivers.** As of the Effective Date, ATS waives any and all rights it has to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. ATS shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither ATS nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and ATS shall waive any statutory right to a trial *de novo*. ATS hereby agrees to waive any claims it might have under the Equal Access to Justice Act¹⁷ relating to the matters addressed in this Consent Decree.

17. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

18. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

19. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an order

¹⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁷ See 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.

specifically intended to revise the terms of this Consent Decree to which ATS does not expressly consent), that provision will be superseded by such Rule or Order.

20. **Successors and Assigns.** ATS agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

21. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

22. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

23. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

24. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

25. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

William Davenport
Deputy Chief
Enforcement Bureau

Date

George Wilkes
President
American Time & Signal Company

Date